

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 1:15-CV-01046
)	
Plaintiff,)	
)	JUDGE SOLOMON OLIVER, JR.
vs.)	
)	<u>MOTION TO APPROVE AMENDED</u>
CITY OF CLEVELAND)	<u>DISCIPLINARY MATRIX</u>
)	
Defendant.)	
)	
)	

Pursuant to Paragraphs 245 through 249 of the Consent Decree and the Fourth-Year Monitoring Plan in the above-captioned matter, the City of Cleveland (the “City”), on behalf of the Cleveland Division of Police (“CDP” or “Division”), submitted a proposed Amended Disciplinary Guidance Policy (“Amended Disciplinary Matrix”) with Verbal Counseling Form, attached as Exhibit A. It also has submitted an accompanying Table of Discipline, attached as Exhibit B.

The Monitoring Team has carefully reviewed the Amended Disciplinary Matrix. It has determined that it contains important changes to the Division’s existing Disciplinary Matrix that have the potential to improve accountability with respect to misconduct involving dishonesty or

false statements. The Monitoring Team therefore recommends that the Court approve CDP’s Amended Disciplinary Matrix in its entirety.

I. SUMMARY OF CONSENT DECREE REQUIREMENTS REGARDING DISCIPLINE

The Consent Decree obligates CDP to “ensure that discipline for sustained allegations of misconduct comports with due process, and is consistently applied, fair, and based on the nature of the allegation, and that mitigating and aggravating factors are identified and consistently applied and documented.” Dkt. 7-1 at ¶ 245. To that end, the Division needed to “review its current disciplinary matrix and will seek to amend it as necessary[.]” *Id.* Specifically, CDP must ensure that the disciplinary matrix:

- “[E]stablishes a presumptive range of discipline for each type of rule violation;”
- “[I]ncreases the presumptive discipline based on an officer’s prior violations of the same or other rules;”
- “[P]rohibits consideration of the officer’s race, gender, national origin, age, ethnicity, familial relationships, or sexual orientation” as well as “the high (or low) profile nature of the incident;” and
- “[P]rovides that CDP will not take only non-disciplinary corrective action in cases in which the disciplinary matrix calls for the imposition of discipline” but may consider non-disciplinary corrective action “in a case where discipline has [already] been imposed.” *Id.* at ¶ 246.

Further, if the Disciplinary Matrix is amended, the Division “will provide its disciplinary matrix to the [Cleveland Community Police] Commission, the Police Inspector General, and the police unions for comment.” *Id.* at ¶ 248.

II. PROCEDURAL HISTORY

Working with the Department of Justice and Monitoring Team, CDP first revised its then-existing disciplinary matrix to meet the terms of the Consent Decree in early 2018. The Court

formally approved the new Disciplinary Matrix (“2018 Disciplinary Matrix”) and ordered it effective on January 24, 2018. Dkt. 178.

Since the promulgation of the new Matrix, members of the Monitoring Team began auditing the Division’s disciplinary decisions along with the underlying investigations that precipitated them in real-time. The Parties and Team began to discuss various areas that required improvement, particularly around violations involving dishonesty. Specifically, the Monitoring Team recommended to the CDP that the 2018 Disciplinary Matrix be updated to reduce the extent of discretion permitted with respect to cases involving sustained findings for integrity-related violations.

After considering the input of the Department of Justice and Monitoring Team, the Division began to revise its 2018 Disciplinary Matrix in early 2019. On June 6, 2019, the Division sent a draft of the revised disciplinary matrix to the Community Police Commission (“CPC”) and the police unions for their comment. The CPC elected to not provide comments. The CDP reviewed the unions’ input and made further revisions. On August 14, 2019, CDP submitted the current versions of the Amended Disciplinary Matrix and Table of Discipline to the Monitoring Team and Department of Justice.

III. STANDARD OF REVIEW

The Monitoring Team’s role is to “assess and report whether the requirements” of the Consent Decree “have been implemented.” Dkt. 7-1 at ¶ 351; *accord id.* ¶ at 352 (requiring the Monitor to “review . . . policies, procedures, practices, training curricula, and programs developed and implemented under” the Decree). The task of the Monitoring Team here is to determine whether the submitted Amended Disciplinary Matrix complies with the Consent Decree’s requirements.

IV. ANALYSIS OF THE AMENDED DISCIPLINARY MATRIX

The Amended Disciplinary Matrix contains important substantive revisions to the 2018 Disciplinary Matrix that principally address violations involving dishonesty or lack of integrity. Although integrity offenses constituted Group III violations, previously, the 2018 Disciplinary Matrix permitted wide discretion, allowing for the City's Public Safety Director to impose suspensions anywhere from 13 to 30 days, or in the alternative, demotion or termination. The only violation for which the 2018 Disciplinary Matrix calls for automatic termination is for the commission of "felony offenses" or "any conviction resulting in a Weapons Disability" and the only cases where "a rebuttable presumption of termination" exists is for a second Group III violation involving "serious misdemeanor offenses, gross immorality violations, [or] gross neglect of duty." Dkt. 173-1 at 9-10.

The Amended Disciplinary Matrix now allows for a wider range of integrity offenses by adding "dishonesty" to the list of "False Report, false statement, untruthfulness" Group III violations, and creates "a presumption of termination" for such violations. Ex. A at 9. This change will give the Division and City better tools to meet the terms of Paragraph 245, which requires that "discipline for sustained allegations of misconduct" be appropriately "based on the nature of the allegation."

V. CONCLUSION

The task of the Monitoring Team is to duly consider whether the City's submitted Amended Disciplinary Matrix satisfies the terms of the Consent Decree. The Monitoring Team concludes that the Amended Disciplinary Matrix will allow the CDP to better meet the terms of

the Consent Decree. Accordingly, the Monitoring Team approves the Matrix in its entirety and requests that this Court order it effective immediately.

Respectfully submitted,

/s/ Hassan Aden

HASSAN ADEN
Monitor
The Aden Group LLC
8022 Fairfax Road
Alexandria, VA 22308
Tel: (571) 274-7821
Email: aden@theadengroup.com

CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2019, I served the foregoing document entitled Motion to Approve Amended Disciplinary Matrix via the court's ECF system to all counsel of record.

/s/ Ayesha Bell Hardaway
AYESHA BELL HARDAWAY